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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/825,253

04/15/2004

Moon Hwan Kim

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BACHMAN & LAPOINTE, P.C.

900 CHAPEL STREET

SUITE 1201

NEW HAVEN, CT 06510

EXAMINER

MUI, CHRISTINE T

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

07/17/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/825,253	<b>Applicant(s)</b> KIM ET AL.	
	<b>Examiner</b> CHRISTINE T. MUI	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-5 and 7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5 and 7 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08 June 2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication No. 2002/0170823 to Housefield et al (herein referred Housefield).

6. Regarding claims 1 and 5, the reference Housefield discloses a test apparatus that includes a base station, having a slot for receiving test strip and a portable glucose meter attached to it that includes a port or slot for receiving a test strip. The base and the portable tester are linked to each other when the portable tester is mounted or docked onto the base. The base and portable tester are connected to each other by connectors to conduct electricity to and from the portable tester and base. When the portable tester and base are connected, data is exchanged in between the units, but act as one. The base and the tester includes user input keys and a LCD display.

Furthermore, the (see [0008, 0025-0032]).

7. It is interpreted by the examiner that when the portable unit is mounted or docketed into the base, this is considered the meter body. The meter body, in this instance, is considered the portable unit and base together. The meter body (12 and 14) include a single display unit (20) for displaying several analytes including determining the level of glucose in a sample. The meter body includes an upper receiving hole formed on the upper end (38) and a lower receiving hole, or port, that

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receives a test strip (see [0008], 16). Since it is interpreted by the examiner that when the portable device and the base are connected, this is considered to be the meter body acting as a single device, the microprocessor of each individual unit acts as a single unit as well when connected, measures either the upper or lower connector, upper in this case, as disclosed in the instant application. The reference Housefield discloses an operating interface, where the user may control the data displayed and history of results, which is considered to be a controller unit.

8. Regarding claim 3, the reference Housefield discloses the meter body (coupled base and portable tester) include a upper receiving hole for an upper measurement test strip (40) and lower receiving hole (16) that is used to retain test strip (18) , seen in Figure 1. When the base and portable tester are coupled together and are considered to be a single meter body, the connected microprocessor analyze, sending a measurable signal to the sample on the upper receiving hole for several analytes including the measurement of glucose in the sample and not the lower receiving slot or test strip (see [0008, 0026]).

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Housefield as applied to claim 1 above, and further in view of USP 5,661,632 to Register (herein referred 'Register').

10. Regarding claim 7, the reference Housefield discloses the claimed invention except for altering the pattern of the display unit. Register discloses a hand held computer that changes the display of the screen orientation that are controlled by toggle switches (see abstract, claims 1 and 3). The device disclosed by Register changes the

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display of the screen by pressing of a toggle button, creating an electrical connection, which is interpreted by the examiner to be similar to the insertion of one of the test strip, creating a connection to change the orientation of the screen for easy reading . It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the display orientation of the screen for convenient reading of the display in different position.

### ***Response to Arguments***

11. Applicant's arguments filed 08 June 2009 have been fully considered but they are not persuasive.

12. In response to the applicant's argument that the reference to Housefield does not disclose a second receiving hole, Examiner respectfully disagrees. Housefield discloses a slot and use to receive test strips on the base which is considered to be the second receiving hole, where the first receiving hole is (38).

### ***Allowable Subject Matter***

13. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. A device, including two holes for receiving test strips or measurement strips, reports an error message when both receiving holes are inserted with a strip for the measurement and analysis of a sample, for example glucose in a sample of blood is not disclosed or suggested by the prior art of record.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINE T. MUI whose telephone number is (571)270-3243. The examiner can normally be reached on Monday-Thursday 7-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on (571) 272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CTM

/Walter D. Griffin/  
Supervisory Patent Examiner, Art Unit 1797